

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1147 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

RAM SWAROOP RANCHANDRA SHARMA

Versus

M.TUFELAHMAD DIED BY HER HEIRSHUSEINBHUTE TUFELAHMAD

Appearance:

MR NILESH A PANDYA for Petitioners
NOTICE SERVED for Respondent No. 1
MR SK BUKHARI for Respondent No. 3, 4

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 05/05/2000

ORAL JUDGEMENT

#. This is tenants' revision under Section 29(2) of the Bombay Rent Act challenging the judgments and decrees passed by the two courts below directing their eviction from the disputed accommodation.

#. The brief facts are that the defendant No.1 was statutory tenant in the suit premises consisting of one room and Varanda on the first floor on Rs.50/- per month. The defendant No.1 was irregular in paying the rent. He did not pay the rent exceeding 6 months upto January, 1977. It was also alleged that despite service of notice of demand, the rent was not paid to the plaintiff. It was further alleged that the defendant No.1 had sublet or assigned the suit property to the defendant No.2 and had shifted to another premises whose address has been given in the plaint. After terminating tenancy through notice, suit for eviction of the defendants was filed.

#. The suit was resisted by the defendants on the ground that they are joint tenants and not that the defendant No.1 is a statutory tenant. The dispute of standard rent was also raised by them and according to them, standard rent was Rs.15/- per month. The arrears of rent for more than 6 months was also denied by the defendants. Rs.450/- towards the rent from 1-7-1977 to 30-9-1977 was sent by money order which was refused by the plaintiff. The allegation of subletting by the defendant No.1 to the defendant No.2 was also denied. It was pleaded that the defendant No.2 is the brother of the defendant No.1 and was living as brother of the tenant and not as sub tenant. The plea of joint tenancy was also taken, viz. that the tenancy was created jointly in favour of both the defendants. Validity of notice was also challenged. It was admitted that the defendant No.1 had shifted to another premises in Madhukunj Society because of shortage of accommodation but since the wife of the defendant No.1 had left, the defendant No.1 returned back to the suit premises.

#. Both the courts below found that the defendant No.1 was in arrears of rent exceeding 6 months and that he was ready and willing to pay the rent. Notice was held to be valid and legal. However, on the plea of sub tenancy, both the courts gave concurrent finding that the defendant No.1 has sublet or transferred or assigned possession of the suit premises to the defendant No.2. With these findings, the suit was decreed. The appeal was also dismissed by the lower appellate court upholding the plea of sub tenancy. It is therefore this revision.

#. None has appeared from the side of the respondents despite the revision of list thrice. As such, Shri Nilesh Pandya, learned counsel for the revisionist has been heard and the judgments of two courts below have been examined.

#. The only point for consideration in this revision is whether the defendant No.1 has sublet or transferred illegally possession of the disputed accommodation to the defendant No.2. It is in evidence that the defendants are brothers. It is not the case of any party that the defendant No.2 was a stranger. Initially both were residing together. The plea of joint tenancy raised by them was repelled by two courts below. This finding was based on evidence on record. There was no rent note indicating that it was case of joint tenancy. Rent receipts were issued in the name of the defendant No.1 alone. Money order was also sent by the defendant No.1 alone. Besides this, there is oral evidence of Hamidabibi on behalf of the plaintiff to establish that the tenancy was created in favour of the defendant No.1 alone. Thus, the plea of joint tenancy set up by the defendants was rightly repelled by two courts below.

#. It is admitted that initially both the defendants were residing in the suit premises. The defendant No.2 was residing as brother. It is also admitted in the written statement of the defendants that because of shortage of accommodation, the defendant No.1 had shifted to another accommodation in Madhukunj Society along with his wife. It is further admitted that the wife of the defendant No.1 had left and thereafter, the defendant No.1 returned to the suit premises. Hamidabibi stated that the defendant No.1 was not residing in the suit premises since last 2 and 1/2 years before her statement was recorded. She further deposed that the defendant No.1 had transferred possession of the suit premises to the defendant No.2. Even in the written statement, it is admitted that for some time the defendant No.1 shifted along with his wife to other accommodation in Madhukunj Society. During this period, the disputed accommodation remained in exclusive possession of the defendant No.2. It was therefore a case of transfer of exclusive possession of the disputed premises to the defendant No.2. During this period, the defendant No.1 had no control or domain over the disputed property nor he was having control or domain over any portion of the tenanted accommodation. It will be therefore deemed that he had transferred exclusive possession of the property to the defendant No.2. Under these facts and circumstances provisions of Section 13(1)(c) can safely be attracted which provide that where the tenant has since coming into operation of this Act unlawfully sublet whole or part of the premisses or assigned or transferred in any manner, his interest therein is liable to be evicted. Sub tenancy is always secret contract between the tenant and the sub tenant, hence the landlord can hardly prove sub

tenancy by direct evidence. Moreover, in view of relationship between the defendants, it can be safely concluded that it was case of subletting. No matter they were brothers living together, but assigning of interest of tenant in chief, or transfer of possession of suit property in favour of the sub tenant is established and as such, the two courts were justified in passing decree for eviction on this count. Variance between pleadings and proof of the defendant No.1 was rightly taken notice of by the lower appellate court on the point of joint tenancy. In the absence of rent note and rent receipts in the name of the two defendants, the plea of joint tenancy cannot be accepted and it was rightly not accepted by the two courts below. The defendant No. 1 is highly interested witness. His plea of joint tenancy was rejected by the two courts below. He had gone to extent of stating that he did not receive notice at the address of Madhukunj Society. That statement was found false by the lower appellate court in view of the acknowledgment receipt Exh.27. The notice was served on the defendant No.1 at Madhukunj Society residence which also goes to show that he had shifted to this premises and had transferred possession of the premises in suit to the defendant No.2.

#. In view of above discussions, it is clear that the defendant No.1 had transferred or assigned in any manner possession of the suit premises unlawfully without consent of the landlords to the defendant No.2. This was sufficient ground for eviction of both the defendants from the disputed premises. Hence there is no error in the judgment and decree passed by the two courts below. I do not find any merit in the revision which is hereby dismissed with no order as to costs.

Date : 5-5-2000 [D.C.Srivastava, J.]

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